

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BIG RUN STUDIOS INC., et al.,

Plaintiffs,

v.

AVIAGAMES INC.,

Defendant.

Case No. [21-cv-04656-EJD](#) (SVK)

**ORDER ON JOINT DISCOVERY
SUBMISSIONS**

Dkt. Nos. 101; 103; 104; 112; 114; 116

On April 4, 2023 the Court held a hearing on outstanding discovery disputes that have been the subject of multiple Joint Submissions. In consideration of the briefs, relevant statutory and case law and argument of counsel, the Court issued its rulings from the bench for the reasons stated on the record. This summary Order is for the convenience of the Court and the Parties.

1. Source Code

AviaGames' request for production of (1) portions of Skillz's Software Development Kit ("SDK") code that implement the allegedly infringed UIs, (2) portions of Big Run and Diamond Strike's source code reflecting Big Run and Diamond Strike's implementation of the Skillz SDK that implement Skillz UIs, and (3) portions of Big Run's source code that implement Big Run's UIs is **DENIED** as not proportional to the needs of the litigation pursuant to Federal Rule of Civil Procedure 26(b)(1).

2. Executables

Plaintiff Skillz' request for production of certain executable versions of AviaGames' accused platform is **DENIED**. AviaGames did not maintain executable versions in the ordinary course of its business and recreation of such versions is not proportional to the needs of the

litigation. Fed. R. Civ. P. 26(b)(1); 34(a)(1)(A).

3. Litigation Holds

Both Parties have demanded litigation hold documents from the other Party. There is no factual basis for these requests and as such they are **DENIED**.

4. Plaintiffs' document withheld as privileged

The Court has reviewed the subject document *in camera*. It is properly redacted as attorney work product which protection is not waived by disclosure to investors. Defendant's request is **DENIED**.

5. AviaGames interrogatories nos. 15, 16 in re identification of "similarities" between accused and asserted works in third-party works

AviaGames' request to compel responses to these interrogatories is **DENIED**. These are improper interrogatories for the reasons identified on the record.

The Parties are commended for their continuing meet and confer efforts which have resolved a large number of disputes and are **ORDERED** to continue these efforts towards constructive compromises and resolutions of discovery disputes as they arise. In light of this progress, AviaGames' request for referral to a special master (Dkt. 101) is **TERMINATED** as moot.

SO ORDERED.

Dated: April 4, 2023


SUSAN VAN KEULEN
United States Magistrate Judge